IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Surja Ram v. Board of Revenue & Ors.

S.B.CIVILWRIT PETITION No.2349/1993
under Article 226 of the Constitution of India.

Date of Order : 21st March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioners.
Mr. L.R.Upadhyaya, Dy.Govt.Advocate.

BY THE COURT :

By order dated 16.11.1998 Smt.Kistoor Devi widow of Late Surjaram, Badri Ram s/o Surjaram and Jaswant Singh s/o Surjaram were allowed to be substituted as petitioner being heirs and legal representatives of original petitioner Surjaram. The counsel for the petitioner at the outset stated that Smt.Kistoor Devi also died some time back leaving behind her two sons Badri Ram and Jaswant Singh (petitioners No.2 and 3), therefore, the writ petition is prosecuted on behalf of these two petitioners only.

This petition for writ is directed agianst the judgment dated 15.9.1990 passed by

Additional Collector (Administration), Sriganganagar and the order dated 17.3.1993 passed by Board of Revenue, Rajasthan, Ajmer. By judgment dated 15.9.1990 the Additional Collector (Administration), Sriganganagar exercising powers under Section 15(1) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "the Act of 1973") after inquiry declared 65.12 bighas of land surplus with Shri Surjaram. The order passed by the Additional Collector was affirmed by Board of Revenue, Rajasthan, Ajmer by judgment dated 17.3.1993 while rejecting the appeal preferred by Shri Surjaram under Section 23(2)(a) of the Act of 1973.

The facts in brief are that the authorised officer under Chapter-III(B) of the Rajasthan Tenancy Act, 195 (hereinafter referred to as "the Old Ceiling Law") assessed Surjaram (hereinafter referred as "original petitioner") and dropped the proceedings. The petitioner was also assessed under the Act of 1973 and the proceedings were again dropped on 4.11.1974. The State Government in exercise of its powers under Section 15(1) of the Act of 1973 directed the Additional Collector, Sriganganagar to reopen and re-decide ceiling case of the petitioner by an order dated 14.9.1982.

Learned Additional Collector called a report from Tehsildar with regard to family and

land owned according to which petitioner Surjaram was having 16.10. bighas of land whereas Badri Ram and Jaswant Singh, both sons of Surjaram, were having 38.05 and 49.10 bighas of land respectively. The Tehsildar also noted the fact that on 1.1.1973 Badri Ram as well as Jaswant Singh both were adult. After holding inquiry the Additional Collector (Administration) by order dated 15.9.1990 held that out of 112 bighas of land the petitioner could have retained 46.08 bighas of land and remaining 65.12 bighas of land was surplus.

Being aggrieved by order dated 15.9.1990 the petitioner preferred an appeal before Board of Revenue, Rajasthan, Ajmer under Section 23(2)(a) of the Act of 1973 but the same was also rejected by judgment dated 17.3.1993, hence this writ petition is preferred.

The contention of counsel for the petitioner is that, learned Additional Collector as well as Board of Revenue, both the courts below erred while clubbing land owned by Jaswant Singh as on 1.4.1966 without giving any finding with respect to dependence of Jaswant Singh on Surjaram. It is stated that Jaswant Singh was not dependent to Surjaram, therefore, he could not be included in his family.

I have heard learned counsel for the parties.

The term “family” as defined under Section 30-B(a) of the Rajasthan Tenancy Act, 1955 reads as under:-

> “30B(a) “family” shall mean a family consisting of a husband and wife, their children and grand-children being dependent on them and the widowed mother of the husband so dependent.”

According to the definition of “family” under Section 30-B(a) of the Old Ceiling Law dependence of child/children is the most material circumstance which is required to be adjudicated to include children/child in family. This Court in the case of Jaganath V/s S.D.O. & Ors., reported in 1985 RLR 557, while considering definition of “family” under Old Ceiling Law, held as under:-

> “7.- I have given serious and anxious consideration to the rival contentions advanced by the learned counsel for the parties. The statutory definition of the word “family” given in Sec.30.E of the Act, is to the effect that “family” shall mean a family consisting of a husband and wife, their children and grand-children being dependent. Children and grand-children can be treated as members of the family, only if they are dependent on their parents and not otherwise. In the statutory definition, it would appear that minority and majority has not been taken into

consideration. What has been taken into consideration is the dependency of the children and grand-children on their parents. The dependency is a question of fact and has relation to the question of maintenance of the children and grand-children, those who can maintain themselves are not dependent on their parents, whether they are minor or major and would not be considered to be members of the family. In order to exclude the children and grand children from the concept of the word "family" as defined in Sec.30 B (a), it has to be averred that they are not dependent on their father and it has to be established by satisfactory credible evidence that they are not dependent on their father. It is only on the basis of such evidence, if adduced, a finding can be reached whether the children and grand-children are dependent on their father or not.

10.- On the basis of minority, dependency can be inferred. This approach to the question, in my opinion, appears to be erroneous in law. As already stated above, a minor may or may not be dependent on his father. When the matter has not been viewed from the correct legal perspective by the Ceiling Authorities, then their orders cannot be sustained and the orders deserve to be quashed and it would be proper that the Sub Divisional Officer may hold an enquiry into the question of dependency of the minors and thereafter decide as to whether their land can be clubbed with the land of their father or their land has to be excluded and dealt with separately."

Under the Old Ceiling Law dependence upon parents is an essential ingredients to be a member of family. A minor could not be a member of family if not dependent to his parents and at the same time an adult but dependent to parents is required to be treated as a member of the family. The courts below while treating Jaswant Singh as a member of family of Surjaram were required to give a specific finding with respect to his dependence on Surjaram. No such finding has been given on such a material circumstance to determine the question as to whether Jaswant Singh would be considered to be a member of family being dependent or would be excluded being an independent unit. The courts below merely on the count that Jaswant Singh was minor on 1.4.1966 considered him as member of the family of Surjaram. In view of it the courts below apparently committed an error while considering Jaswant Singh as member of the family of Surjaram.

Shri J.L.Purohit, counsel for the petitioner also contended that reopening of ceiling case under Section 15(1) of the Act of 1973 itself was without jurisdiction being barred by limitation as provided under proviso to Section 15(1) and 15(2) of the Act of 1973. This contention is not raised by the petitioner in the writ petition and the same was also not agitated before the courts below. However, this question goes to the route of the dispute and, therefore,

adjudication to the same cannot be denied if sufficient facts are placed on record. In the present writ petition the requisite facts are not available on record.

Looking to all the facts and legal position discussed above the writ petition deserves acceptance, therefore, the orders impugned dated 15.9.1990 passed by Additional Collector (Administration), Sriganganagar and dated 17.3.1993 passed by Board of Revenue, Rajasthan, Ajmer are hereby quashed. The Additional Collector, Sriganganagar is directed to decide the petitioner's case after holding an inquiry into the question of dependency of Jaswant Singh upon petitioner Surjaram and then to pass a fresh order. L.Rs. of the petitioner are at liberty to raise the question as to whether reopening of ceiling case in present set of facts and circumstances is barred by limitation before the Additional Collector. The Additional Collector is directed to adjudicate this question also and to give a specific finding in this regard too.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.